

<sup>3</sup> The Board notes that, following the April 13, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include a right knee condition causally related to the accepted December 16, 2018 employment injury.

## **FACTUAL HISTORY**

On December 18, 2018 appellant, then a 41-year-old supervisor, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2018 she sustained right foot and right knee injuries while in the performance of duty when a forklift ran over her foot. She stopped work on December 16, 2018. On April 23, 2019 OWCP accepted the claim for right foot contusion and right foot nondisplaced medial cuneiform fracture. It paid appellant wage-loss compensation on the supplemental rolls commencing January 31, 2019 and on the periodic rolls from August 18 to October 12, 2019.

In support of her claim, appellant submitted progress notes dated December 17, 2018, wherein, Dr. Hossam Amin, a Board-certified internist, noted that appellant was injured at work the prior day when a forklift ran over her right foot. Examination findings were detailed. Diagnoses included right foot pain, internal knee derangement, right knee and foot tendinitis, and right ankle sprain.

In a January 14, 2019 report, Dr. Joseph Ibrahim, a Board-certified physiatrist and pain medicine physician, diagnosed internal derangement of the right knee. According to appellant, her right foot was run over by a forklift on December 15, 2018. She stated that she noticed that her right knee was swollen and painful the day following the injury. Appellant was uncertain as to exactly when her right knee became painful because her initial focus had been on her right foot. An examination of the right knee revealed limited range of motion, no significant swelling, diffuse tenderness over the medial joint, positive patellar compression, valgus stress, and McMurray tests, and negative Lachman, posterior drawer, and varus stress tests.

On January 29, 2019 Dr. Ibrahim noted that appellant was seen on January 14 and 28, 2019 for an injury sustained on December 16, 2018 when her foot was run over by a forklift. Appellant related that her right knee was swollen and painful on the date of injury. A physical examination revealed limited flexion and extension, swelling, diffuse tenderness over the medial joint line, positive patellar, valgus and varus stress, and McMurray tests, and negative wave sign, anterior and posterior Drawer tests, and Lachman test. Dr. Ibrahim attributed appellant's pain and difficulty ambulating to the December 16, 2018 employment injury. He indicated that he was waiting for OWCP to authorize a magnetic resonance imaging (MRI) scan to further evaluate appellant's right knee condition.

In a February 15, 2019 note, Dr. Adurey Abatemarco, a podiatrist, advised that appellant could not work due to her injury. She diagnosed a fractured cuneiform and a LisFranc partial tear.

By decision dated May 22, 2019, OWCP denied expansion of appellant's claim to include the conditions of right knee sprain, right knee internal derangement, right foot LisFranc tear, plantar fibromatosis and other synovitis, right ankle and foot tenosynovitis, aggravation of preexisting bilateral shoulder tendinitis, thoracic and lumbosacral intervertebral disc displacement,

other cervical disc displacement, cervical, lumbosacral and thoracic radiculopathy, fibromyalgia, and bursitis.

On May 30, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 23, 2019.

By decision dated December 4, 2019, OWCP's hearing representative affirmed in part and reversed in part the May 22, 2019 OWCP decision. OWCP's hearing representative found that the evidence of record was sufficient to expand the acceptance of the claim to include right foot LisFranc partial tear, but insufficient to expand the acceptance of the claim to include additional claimed conditions.

On January 14, 2020 appellant, through counsel, requested reconsideration of the December 4, 2019 decision, to the extent that it affirmed the denial of a right knee injury. Attached to the reconsideration request was a January 3, 2020 report by Dr. Ibrahim. In the January 3, 2020 report, Dr. Ibrahim related that he had treated appellant prior to the December 16, 2018 employment injury and she had no right knee complaints. Based on the mechanism of injury as described by appellant and documented work injury, appellant sustained a right knee injury. In support of his conclusion, Dr. Ibrahim explained that when appellant's right foot was struck by the forklift, her reflex was to move her leg away from the forklift causing her to twist her right knee and sustain a right knee injury.

By decision dated January 23, 2020, OWCP expanded its acceptance of the claim to include right foot LisFranc partial tear.

By decision dated April 13, 2020, OWCP denied modification of the December 4, 2019 decision.

### **LEGAL PRECEDENT**

Where an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>4</sup>

To establish causal relationship, the employee must submit rationalized medical opinion evidence.<sup>5</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>6</sup> The weight of medical evidence is determined by its reliability,

---

<sup>4</sup> *D.H.*, Docket No. 19-0687 (issued March 31, 2021); *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>5</sup> *D.H.*, *id.*; *E.W.*, Docket No. 20-0338 (issued October 9, 2020).

<sup>6</sup> *D.H.*, *id.*; *L.P.*, Docket No. 20-0609 (issued October 15, 2020); *Leslie C. Moore*, 52 ECAB 132 (2000).

its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for a decision.

In his reports dated January 14 and 29, 2019 and January 3, 2020, Dr. Ibrahim concluded that on December 16, 2018 appellant sustained a right knee injury when her foot was run over by a forklift driver. He diagnosed right knee internal derangement and he explained that appellant sustained a right knee injury when the forklift drove over her right foot and she reflexively moved her leg away from the forklift, causing her to twist her right knee and sustain injury. Dr. Ibrahim noted that appellant's right knee internal derangement was caused by this mechanism of injury, causally related to the accepted December 16, 2018 employment injury.

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>8</sup> OWCP has an obligation to see that justice is done.<sup>9</sup> The Board finds that, although Dr. Ibrahim's opinion was insufficiently rationalized to meet appellant's burden of proof to establish expansion of the acceptance of her claim to include a right knee condition due to the accepted December 16, 2018 employment injury, it is sufficient to require further development of the case by OWCP.<sup>10</sup> Thus, the Board will remand the case to OWCP for further development of the medical evidence to obtain a rationalized medical opinion as to whether the accepted December 16, 2018 employment injury caused or aggravated a right knee condition. On remand OWCP shall prepare a statement of accepted facts and refer appellant to a specialist in the appropriate field of medicine to obtain a second opinion examination as to whether the December 16, 2018 employment injury caused an additional right knee condition.<sup>11</sup> If the second opinion physician disagrees with the explanations provided by Dr. Ibrahim, he or she must provide a fully-rationalized explanation regarding why the accepted employment injury was insufficient to have caused appellant's right knee condition.<sup>12</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

---

<sup>7</sup> *D.H., id.; J.L.*, Docket No. 20-0717 (issued October 15, 2020); *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> *A.V.*, Docket No. 20-1251 (issued January 28, 2021); *N.L.*, Docket No. 20-0889 (issued December 17, 2020); *T.L.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> *See M.H.*, Docket No. 18-1068 (issued June 2, 2020); *J.P.*, Docket No. 19-1206 (issued February 11, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>11</sup> *Id.*

<sup>12</sup> *See D.G.*, Docket No. 20-1183 (issued May 26, 2021).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 13, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: September 10, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board